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MICHAEL RODAK, J.

IN THE

Supreme Court of the United States

October Term 1972
No. 72-552

ROBERT SATIACUM,
Petitioner,
v.
STATE OF WASHINGTON,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of the State of Washington

BRIEF FOR RESPONDENT IN OPPOSITION

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Date: November 30, 1972.

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Page

INDEX

Opinions Below 1
Jurisdiction 2
Questions Presented 2
Constitutional, Treaty and Statutory Provisions Involved 3
Counter-Statement of the Case 3
Argument as to Issues 6
Conclusion 11

Appendices:

Appendix A—Opinion of the Supreme Court of the State of Washington ..... A- 1
Appendix B—Constitutional Provisions ..... A- 5
Appendix C—Treaty Provisions ..... A- 6
Appendix D—Statutory Provisions A-12

TABLES OF AUTHORITY

Cases

Ashwander v. Tennessee, 297 US 288, at 347, 56 S.Ct. 466, 80 L.Ed. 688, at 711 (Feb. 17, 1936, Mr. Justice Brandeis concurring, in part), rehearing denied, 297 US 728, 56 S.Ct. 588, 80 L.Ed. 1011 (March 2, 1936) 7

Draper v. Washington, 372 US 487, at 490, n. 1, 83 S.Ct. 774, 9 L.Ed.2d 899, at 902-903, n. 1 (March 18, 1963) 5

Kautz v. Department of Game, 391 US 932, 88 S. Ct. 1725, 20 L.Ed.2d 689 (May 27, 1968), rehearing denied, 393 US 898, 89 S. Ct. 64, 21 L.Ed.2d 185 (Oct. 14, 1968) 7

Page

Cases—(Continued)

Kennedy v. Silas Mason Co., 334 US 249, at 256-257, 68 S.Ct. 1031, 92 L.Ed. 1347 at 1350-1351 (May 17, 1948) 8

Puyallup Tribe v. Department of Game, 391 US 392, at 398-399, 88 S.Ct. 1725, 20 L.Ed.2d 689, at 693-694 (May 27, 1968), rehearing denied, 393 US 898, 89 S.Ct. 64, 21 L.Ed.2d 185 (Oct. 14, 1968) ..... 7, 8 -9

Constitutional Provisions

United States Constitution:

Article VI 3

Fourteenth Amendment 3

Statutory Provisions

28 U.S.C. §1257(3) 2

RCW 75.08.260 ..... 1, 3

RCW 75.12.120 ..... 1, 3, 10

Rules

Supreme Court of the United States:

Rule 40(3) 3

Other Authorities

Annotation: 38 A.L.R. 1196, at 1198-1199 10

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OPINIONS BELOW

Petitioner was found guilty (St. 162) by a unanimous verdict of a 12-person jury of a crime—that he did "wantonly waste or destroy food fish" in violation of RCW 75.12.120, which is reproduced in Appendix D hereto.

With a possible penalty of imprisonment in the county jail of not less than 30 days nor more than one year, and/or a fine of not less than $25 nor more than $1,000, [1]Petitioner was fined $75 and court costs (St. 169).

1. RCW 75.08.260 which so provides is reproduced in Appendix D hereto.

There was no written opinion in the trial Court.

The opinion of the Supreme Court of Washington, *en banc*, unanimously (9-0) affirming that Judgment and Sentence on April 13, 1972, is reprinted in Appendix A hereto, and is reported in 80 Wn.2d 492, 495 P.2d 1035. A Petition for Rehearing was denied July 19, 1972 (Petition, Appendix B, p. 17). The Remittitur is dated July 20, 1972 (Petition, Appendix C, pp. 18-19).

JURISDICTION

Petitioner is invoking (Petition, p. 4) the jurisdiction of this honorable Court pursuant to 28 U.S.C. §1257(3) which provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * *
>
> (3) By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

QUESTIONS PRESENTED

May the State, in the interest of "conserving fish resources" make it unlawful for *anyone* "to wantonly waste or destroy food fish" so that Petitioner, an enrolled member of an Indian Tribe, could be so found

guilty (St. 162) by a unanimous verdict of a twelve-person jury and be fined $75 and costs by the trial Court, despite Petitioner's claim of immunity because of a Treaty which gave members of his tribe the right of "taking fish at all usual and accustomed grounds and stations * * * in common with all citizens of the Territory"?

CONSTITUTIONAL, TREATY AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions under which Petitioner claims title, rights, privileges and immunities are Article VI of, and the Fourteenth Amendment, §1, to, the Constitution of the United States—both reprinted in Appendix B.

The treaty here involved is that proclaimed on March 3, 1855, between the United States and the Puyallup Tribe of Indians, *inter alia,* reprinted in Appendix C.

The statutes of the State of Washington here involved include the following provisions of the Revised Code of Washington (RCW): 75.12.120 and 75.08.260, all of which are reprinted in Appendix D.

COUNTER-STATEMENT OF THE CASE

In accordance with this honorable Court's Rule 40(3), the State of Washington submits the following Counter-Statement:

There is a Stipulation—termed an "Agreed Statement of Facts of the Case"—between the State and the Petitioner and made *after* Petitioner's conviction

by a unanimous Jury Verdict of twelve, after the Judgment and Sentence, and after the filing of the Notice of Appeal in the trial (Superior) Court.

It was known to the Supreme Court of Washington because, except for its caption, it was reproduced in the Brief for the State in that Court (No. 42184, pp. 4 through 7).

It is as follows, with only its caption omitted:

> The following agreed statement is presented by the parties in lieu of record on appeal.
>
> AGREED STATEMENT OF FACTS OF THE CASE
>
> The defendant was charged by Information Pierce County Number 39491 in the Superior Court of Pierce County. That the said Information contained Three Counts and all acts were alleged on July 29, 1970. Count I charged the taking fish for or possessing salmon for commercial purposes taken in a salmon preserve, to wit Puyallup River Salmon Preserve, Count II unlawfully and wantonly waste or destroy food fish, Count III unlawfully carry a firearm.
>
> Defendant timely moved to suppress any and all evidence. The motion was denied by the trial court.
>
> Defendant also moved to dismiss the Information against appellant because the trial court lacked jurisdiction in the matter. The motion to dismiss because of lack of jurisdiction was based upon the fact that defendant was an Indian, and an enrolled member of the Puyallup Tribe. That on July 29, 1970 he was fishing at the usual and accustomed fishing grounds and stations, namely the Puyallup River. That at the aforesaid time and place defendant was exercising his tribal fishing rights under the Treaty of Medicine Creek. The trial court denied the motion to dismiss.
>
> The case came on for trial, by a jury, before Judge Hardyn B. Soule, on October 20, 1970. The

defendant testified at the time of trial that he was an Indian, a member of the Puyallup Tribe, and was fishing at the usual and accustomed fishing grounds and stations on the Puyallup Indian Reservation at the time of his arrest on July 29, 1970. This evidence was uncontradicted, except that defendant was not fishing on Reservation. That at the conclusion of the State's case the trial court granted defendant's motion to dismiss as to Counts I and III, but denied the motion as to Count II. Defendant again raised the question as to jurisdiction, but the trial court submitted the matter to the jury on Count II.

The jury found the defendant guilty of Count II. On November 17, 1970 the trial court denied defendant's motion for a new trial, and sentenced the defendant to pay a $75.00 fine plus costs. The defendant gave timely notice of appeal.

POINTS RELIED UPON BY DEFENDANT

1. The trial court's failure to grant defendant's motion to suppress the evidence because any and all evidence introduced at the time of trial was obtained unlawfully. The defendant had not committed any crime whatsoever at the time of his arrest on July 29, 1970.

2. The trial court was in error by not granting defendant's motion to dismiss for lack of jurisdiction.

/s/ JACK E. TANNER,
Attorney for Defendant
/s/ EUGENE OLSON
Attorney for Plaintiff

Additionally, the State ordered out the Statement of facts.[2]

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2. References to the Stipulation will be designated as "Stip."
As this honorable Court noted in *Draper v. Washington*, 372 US 487, at 490, n. 1, 83 S.Ct. 774, 9 L.Ed.2d 899, at 902-903, n. 1 (March 18, 1963), in the State of Washington the transcription by the Court Reporter, of the testimony at a Court session, is called the "Statement of Facts" (abbreviated "St."); the official record of Pleadings, Motions, Orders and the like, is called the "Transcript" (abbreviated "Tr.")

The facts here which support the jury's unanimous verdict of guilt (St. 162) as to the waste of salmon are:

That Petitioner was seen to have five King salmon (St. 39, 50) of about 25 pounds each (St. 61); that he was seen to "dump" at least one over the side into the water (St. 50, 58).

No salmon were left in the petitioner's boat when it was landed after his arrest (St. 58).

ARGUMENT AS TO ISSUES

This honorable Court should deny the Petition for a Writ of Certiorari:

(1)

(a) When the trial Court *dismissed Count I* of the Criminal Information (Stip., fourth par., this Brief, p. 5), it removed any possible issue as to what the Petitioner's rights are to fish under the Treaty of Medicine Creek of 1855.

(b) Even without (a) above, the record in this case is far from clear on any constitutional issue arising out of a Treaty right to fish on the Reservation.

The Stipulation states:

> . . . The defendant testified at the time of trial that he was an Indian, a member of the Puyallup Tribe, and was fishing at the usual and accustomed fishing grounds and stations on the Puyallup Indian Reservation at the time of his arrest on July 29, 1970. This evidence was uncontradicted, except that defendant was not fishing on Reservation. [fourth par. this Brief, p. 4-5]

Whatever that Stipulation means, it is no clearer than what happened at the trial (St. 122-129).

The State respectfully suggests, then, that this hon-

orable Court deny the Petition, since the constitutional basis urged by Petitioner is not so clearly present as to be unavoidable. See: *Ashwander v. Tennessee,* 297 US 288, at 347, 56 S.Ct. 466, 80 L.Ed. 688, at 711 (Feb. 17, 1936, Mr. Justice Brandeis concurring in part), rehearing denied, 297 US 728, 58 S.Ct. 558, 80 L.Ed. 1011 (March 2, 1936).

(2)

The record in the case at Bar is less than comprehensive.

The case at Bar, therefore, ought not to be used as a vehicle for a determination of any fishing rights of Petitioner under the Medicine Creek Treaty of 1855 between the United States and the Puyallup Indian Tribe.

There is, on the other hand, another case to which Petitioner here is a party, which *does* have a most comprehensive record, and which involves the right of the Petitioner, that tribe, and other individuals to fish under that same Treaty. See: No. 72-481 in this honorable Court.

That case has been before this honorable Court before. See: *Puyallup Tribe v. Department of Game,* and the companion case, *Kautz v. Department of Game,* 391 US 932, 88 S.Ct. 1725, 20 L.Ed.2d 689 (May 27, 1968), rehearing denied, 393 US 898, 89 S.Ct. 64, 21 L.Ed.2d 185 (Oct. 14, 1968), a case with a most comprehensive record.

On remand to the trial Court, the record was further developed. The appeal from the trial Court was con-

sidered by the Supreme Court of Washington in 80 Wn.2d 561, 497 P.2d 171 (*En Banc,* 6-2, May 4, 1972), rehearing denied (June 30, 1972). It was following that Opinion that the Attorney General of Washington filed the Petition for a Writ of Certiorari, numbered 72-481.

The Solicitor General of the United States has also filed a Brief in that same matter in this honorable Court.

The Petitioner *in the case at Bar* has been, and still is, a party to that most comprehensive case, having been represented in the most recent stages of that case by Arnold J. Barer, Esq. of the Seattle, Washington bar.

In this context, then, Petitioner's rights to *fish* under the Treaty of Medicine Creek (1855) should be determined by this honorable Court within the most comprehensive record in No. 72-481, rather than within the record at Bar involving, as it does, the stipulation and a 169-page Statement of Facts. See and compare: *Kennedy v. Silas Mason Co.,* 334 US 249 at 256-257, 68 S.Ct. 1031, 92 L.Ed. 1347 at 1350-1351 (May 17, 1948), where the shortcomings of the record apparently were not clear until decision.

(3)

On the merits, Petitioner is suggesting that if he has the right, under the treaty, without regulation by the State, to fish on the reservation, he also has the right to "waste fish".

The Treaty does not, of course, mention any "right" to "waste fish".

In *Puyallup Tribe v. Department of Game,* 391 US 392, at 398-399, 88 S.Ct. 1725, 20 L.Ed.2d 689, at 693-684 (May 27, 1968), rehearing denied, 393 US 898, 89 S.Ct. 64, 21 L.Ed.2d 185 (Oct. 14, 1968), this honorable Court indicated:

> And we see no reason why the right of the Indians may not also be regulated by an appropriate exercise of the police power of the State. The right to fish "at all usual and accustomed places" may, of course, not be qualified by the State, even though all Indians born in the United States are now citizens of the United States. . . . But the manner of fishing, the size of the take, the restriction of commercial fishing, and the like may be regulated by the State in the interest of conservation, provided the regulation meets appropriate standards and does not discriminate against the Indians.
>
> * * * *
>
> In other words, the "right" to fish outside the reservation was a treaty "right" that could not be qualified or conditioned by the State. But "the time and manner of fishing . . . necessary for the conservation of fish," not being defined or established by the treaty, were within the reach of state power.
>
> The overriding police power of the State, expressed in nondiscriminatory measures for conserving fish resources, is preserved.
>
> (391 U.S. at 398-399; 20 L.Ed.2d 693-694)

The State here suggests, then, that it may enact legislation making it unlawful "to wantonly waste or destroy food fish"[3] because it is "in the interest of conservation", and it is "necessary for the conservation of fish" and "for conserving fish resources" (391 US at 399, 20 L.Ed2d at 694).

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3. The Washington State Legislature has specifically provided in RCW 75.12.120:

> *"Waste of food or shellfish unlawful—Purchase for canning, etc.* It shall be unlawful for any person to wantonly waste or destroy food fish or shellfish taken or caught in any of the waters of the state, or the offshore waters, and no person engaged in the canning, preserving or curing of food fish and shellfish shall purchase or engage a greater quantity than he is able to can, preserve, or cure within sixty hours after the same are taken from the water, unless such food fish or shellfish have been kept artificially chilled and in good marketable condition."

This statute is similar to that in other states blessed with fish and wild game. See: *Annotations* 38 A.L.R. 1196, at 1198-1199, and decisions supplemental thereto.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari in this matter should be denied.

Respectfully submitted,

JOSEPH D. MLADINOV,

Special Counsel to the
Prosecuting Attorney of
Pierce County, Washington,

Counsel of Record for the
State of Washington, Respondent.

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APPENDIX A

Opinion of the Supreme Court of Washington
[Reported in 80 Wn.2d 492, 495 P.2d 1035]

No. 42184

En Banc

April 13, 1972

THE STATE OF WASHINGTON,
Respondent,
v.
ROBERT SATIACUM,
Appellant.

[1] **States — Indians — Reservation — Termination.** An Indian reservation ceases to exist, whether or not officially terminated by act of Congress, when the land previously constituting the reservation has virtually all been sold to private non-Indian owners and there is no longer in existence any distinct Indian community recognized and treated as such. An individual Indian of that tribal descent within the indicated geographical area is subject to state police power jurisdiction in common with other citizens.

[2] **Appeal and Error—Assignments of Error—Argument in Support — Necessity.** An appellant seeking review of a criminal case has the burden and obligation of examining the record and presenting to the court argument and authority in support of his contentions.

[3] **Fish — Indians — Treaties — Right to Fish in Common With Others—Unlawful Waste of Fish.** The right guaranteed by treaty to an Indian to fish "in common with all citizens of the Territory" does not provide a basis for excusing his violation of a statute prohibiting unlawful waste or destruction of food fish.

Appeal from a judgment of the Superior Court for Pierce County, No. 39491, Hardyn B. Soule, J., entered November 18, 1970. *Affirmed.*

Prosecution for violation of a fishing regulation, unlawful waste of food fish, and for unlawfully carrying a firearm. Defendant appeals from a conviction and sentence for waste of food fish.

Jack E. Tanner, for appellant.

Ronald L. Hendry, Prosecuting Attorney, Joseph D. Mladinov, Special Counsel, and *Eugene G. Olson, Chief Criminal Deputy,* for respondent.

FINLEY, J.—This is an appeal from a conviction for the wasting of food fish in violation of RCW 75.12.120. On July 29, 1970, Robert Satiacum, a member of the Puyallup Indian Tribe, was arrested while fishing in the Puyallup River Salmon Preserve. He was subsequently charged with (1) possessing salmon taken from a salmon preserve for commercial purposes, (2) unlawful waste or destruction of food fish, prohibited by RCW 75.12.120, and (3) unlawfully carrying a firearm. At trial, the court granted defendant Satiacum's motion to dismiss charges (1) and (3), but denied the motion as to charge (2). Defendant also moved to suppress any and all evidence against him and to dismiss the information on the ground that the trial court lacked jurisdiction in the matter. Both motions were denied. The jury found the defendant guilty of unlawful waste or destruction of food fish. On November 17, 1970, the trial court denied defendant's motion for a new trial and imposed sentence, fining Mr. Satiacum $75 and court costs. He has appealed.

Appellant first contends that the trial court erred in failing to dismiss the information in this case for lack of jurisdiction. Though his brief on appeal provides neither authority nor reasoning to support his contention, he claims that our statement in *Department of Game v. Puyallup Tribe, Inc.*, 70 Wn.2d 245, 422 P.2d 754 (1967), that the Puyallup Indian Reservation has ceased to exist, is wrong.

[1] We do not agree. For purposes of determining the jurisdiction of state or federal courts, the Puyallup Indian Reservation *has* ceased to exist. The lands

which constituted the reservation (with the exception of two small tracts presently being used as cemeteries totaling 22 out of the original 18,000 acres have been sold to non-Indian citizens of this state pursuant to Act of April 28, 1904, ch. 1816, 33 Stat. 565 (1904), which authorized the Indians to convey their allotted lands in fee simple free of all restrictions. Regardless of whether the reservation has been officially and finally terminated by act of Congress, we are convinced that the federal jurisdiction made applicable to "Indian Country" by 18 U.S.C.A. § 1152 has ceased to exist because the Puyallup Indians have sold virtually all of their lands, and because any distinct Indian community recognized and treated as such by the United States government has ceased to exist. See *United States v. Sandoval,* 231 U.S. 28, 46, 58 L. Ed. 107, 34 S.Ct. 1 (1913).

Since the Indian lands have been sold and an Indian community no longer exists within the boundaries of the former Puyallup Indian Reservation, the State of Washington may, under the circumstances of this case, exercise its police power jurisdiction over Mr. Satiacum, a Puyallup Indian, in common with its jurisdiction over all other citizens of this state. In *Seymour v. Superintendent of State Penitentiary,* 368 U.S. 351, 7 L. Ed. 2d 346, 82 S. Ct. 424 (1962), the United States Supreme Court overruled our decision supporting state court jurisdiction over a burglary committed in the Colville Indian Reservation. The result we reach in the instant case is consistent with the ultimate decision in *Seymour,* since in that case it appears that a recognizable Indian community had continued to exist on the reservation land, and the continued existence of that reservation and of federal jurisdiction over it had been implicitly recognized in several subsequent congressional enactments.

[2] Appellant also contends that the trial court erred in refusing to grant his motion to supress all the evidence against him in this case because he had not committed a crime of any kind at the time of his arrest. Again, there is no argument or legal authority in appellant's brief to support this contention. It is

appellant's burden and obligation to examine the record and to present to this court any possible grounds upon which it might be said that "appellant had not committed a crime of any kind at the time of his arrest." He has not done so; in fact, all the evidence we find in the record supports his conviction.

[3] We note in passing that if appellant's contention is that he did not commit a crime because he was merely exercising the fishing rights guaranteed to him by the Medicine Creek Treaty, any such contention is without merit in this case. The right to fish "in common with all citizens of the Territory" guaranteed by that treaty does not include the right wantonly to waste food fish. There can be no doubt that prohibition of the wasting of food fish is a conservation measure which is "reasonable and necessary to preserve the fishery," and is well within the police power of the State of Washington. *Department of Game v. Puyallup Tribe, Inc., Supra* at 261.

HAMILTON, C.J., ROSELLINI, HUNTER, HALE, NEILL, STAFFORD, WRIGHT, and UTTER, JJ., concur.

APPENDIX B

CONSTITUTIONAL PROVISIONS

PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES

Article VI

"All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

"The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

Fourteenth Amendment

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any persons of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX C

TREATY PROVISIONS

Treaty proclaimed March 3, 1855, between the United States of America and the Puyallup Tribe of Indians, *inter alia*:

560

* * * * *

NISQUALLY, PUYALLUP, ETC. [4]

FRANKLIN PIERCE, President of the United States of America, to all and singular to whom these presents shall come, greeting:

Whereas a treaty was made and concluded on the She-nah-nam, or Medicine Creek, in the Territory of Washington, on the twenty-sixth day of December, one thousand eight hundred and fifty-four, between the United States of America and the Nisqually and other bands of Indians, which treaty is in the words following, to wit:

Articles of agreement and convention made and concluded on the She-nah-nam, or Medicine Creek, in the Territory of Washington, this twenty-sixth day of December, in the year one thousand eight hundred and fifty-four, by Isaac I. Stevens, governor and superintendent of Indian affairs of the said Territory, on the part of the United States, and the undersigned chiefs, head men, and delegates of the Nisqually, (561)
Puyallup, Steilacoom, Squawskin, S'Homamish, Steh-chass T'Peeksin, Squi-aitl, and Sa-heh-wamish tribes and bands of Indians, occupying the lands

---

4. This has been called the "Treaty of Medicine Creek", 10 Stat. 1132. This reproduction of the Treaty is from *A Compilation of All the Treaties Between the United States and the Indian Tribes*, Govt. Print. Office, Washington. D.C., 1873, which was "prepared under the provisions of the Act of Congress, approved March 3, 1873, entitled 'An Act to provide for the preparation and presentation to Congress of the revision of the laws of the United States, consolidating the laws relating to post roads, and a code relating to military offenses, and the revision of treaties with the Indian Tribes now in Force'." Pagination is as in that Compilation.

lying round the head of Puget's Sound and the adjacent inlets, who, for the purpose of this treaty, are to be regarded as one nation, on behalf of said tribes and bands, and duly authorized by them.

ARTICLE 1. The said tribes and bands of Indians hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the lands and country occupied by them, bounded and described as follows, to wit: Commencing at the point on the eastern side of Admiralty Inlet, known as Point Pully, about midway between Commencement and Elliott Bays; thence running in a southeasterly direction, following the divide between the waters of the Puyallup and Dwamish, or White Rivers, to the summit of the Cascade Mountains; thence southerly, along the summit of said range, to a point opposite the main source of the Skookum Chuck Creek; thence to and down said creek, to the coal mine; thence northwesterly, to the summit of the Black Hills; thence northerly, to the upper forks of the Satsop River; thence northeasterly, through the portage known as Wilkes's Portage, to Point Southworth, on the western side of Admiralty Inlet; thence around the foot of Vashon's Island, easterly and southeasterly, to the place of beginning.

ARTICLE 2. There is, however, reserved for the present use and occupation of the said tribes and bands, the following tracts of land, viz: The small island called Klah-che-min, situated opposite the mouths of Hammersley's and Totten's Inlets, and separated from Hartstene Island by Peale's Passage, containing about two sections of land by estimation; a square tract containing two sections, or twelve hundred and eighty acres, on Puget's Sound near the mouth of the Shenah-nam Creek, one mile west of the meridian line of the United States land survey, and a square tract containing two sections, or twelve hundred and eighty acres, lying on the south side of Commencement Bay; all which tracts shall be set apart, and, so far as necessary, surveyed and marked out for their exclusive use; nor shall any white man be permitted to reside upon

the same without permission of the tribe and the superintendent or agent. And the said tribes and bands agree to remove to and settle upon the same within one year after the ratification of this treaty, or sooner if the means are furnished them. In the mean time it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States, and upon any ground claimed or occupied, if with the permission of the owner or claimant. If necessary for the public convenience, (562) roads may be run through their reserves, and, on the other hand, the right of way with free access from the same to the nearest public highway is secured to them.

ARTICLE 3. The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands: *Provided, however,* That they shall not take shell-fish from any beds staked or cultivated by citizens, and that they shall alter all stallions not intended for breeding-horses, and shall keep up and confine the latter.

ARTICLE 4. In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of thirty-two thousand five hundred dollars, in the following manner, that is to say: For the first year after the ratification hereof, three thousand two hundred and fifty dollars; for the next two years, three thousand dollars each year; for the next three years, two thousand dollars each year; for the next four years, fifteen hundred dollars each year; for the next five years, twelve hundred dollars each year; and for the next five years, one thousand dollars each year; all which said sums of money shall be applied to the use and benefit of the said Indians, under the direction of the President of the United States, who may, from time to time, determine, at his discretion, upon what beneficial objects to expend the same. And the superintendent of Indian affairs, or other proper officer, shall

each year inform the President of the wishes of said Indians in respect thereto.

ARTICLE 5. To enable the said Indians to remove to and settle upon their aforesaid reservations, and to clear, fence, and break up a sufficient quantity of land for cultivation, the United States further agree to pay the sum of three thousand two hundred and fifty dollars, to be laid out and expended under the direction of the President, and in such manner as he shall approve.

ARTICLE 6. The President may hereafter, when in his opinion the interests of the Territory may require, and the welfare of the said Indians be promoted, remove them from either or all of said reservations to such other suitable place or places within said Territory as he may deem fit, on remunerating them for their improvements and the expenses of their removal, or may consolidate them with other friendly tribes or bands. And he may further, at his discretion, cause the whole or any portion of the lands hereby reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the (563) same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable. Any substantial improvements heretofore made by any Indian, and which he shall be compelled to abandon in consequence of this treaty, shall be valued, under the direction of the President, and payment be made accordingly therefor.

ARTICLE 7. The annuities of the aforesaid tribes and bands shall not be taken to pay the debts of individuals.

ARTICLE 8. The aforesaid tribes and bands acknowledge their dependence on the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations on the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent,

the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of their annuities. Nor will they make war on any other tribe except in self-defence, but will submit all matters of difference between them and other Indians to the Government of the United States, or its agent, for decision, and abide thereby. And if any of the said Indians commit any depredations on any other Indians within the Territory, the same rule shall prevail as that prescribed in this article, in cases of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

ARTICLE 9. The above tribes and bands are desirous to exclude from their reservations the use of ardent spirits, and to prevent their people from drinking the same; and therefore it is provided, that any Indian belonging to said tribes, who is guilty of bringing liquor into said reservations, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

ARTICLE 10. The United States further agree to establish at the general agency for the district of Puget's Sound, within one year from the ratification hereof, and to support, for a period of twenty years, an agricultural and industrial school, to be free to children of the said tribes and bands, in common with those of the other tribes of said district, and to provide the said school with a suitable instructor or instructors, and also to provide a smithy and carpenter's shop, and furnish them with the necessary tools, and employ a blacksmith, carpenter, and farmer, for the term of twenty years, to instruct the Indians in (564) their respective occupations. And the United States further agree to employ a physician to reside at the said central agency, who shall furnish medicine and advice to their sick, and shall vaccinate them; the expenses of the said school, shops, employees, and medical attendance, to be defrayed by the United States, and not deducted from the annuities.

ARTICLE 11. The said tribes and bands agree to free all slaves now held by them, and not to purchase or acquire others hereafter.

ARTICLE 12. The said tribes and bands finally agree not to trade at Vancouver's Island, or elsewhere out of the dominions of the United States; nor shall foreign Indians be permitted to reside in their reservations without consent of the superintendent or agent.

ARTICLE 13. This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

Proclaimed March 3, 1855.

APPENDIX D

STATUTORY PROVISIONS

REVISED CODE OF WASHINGTON (RCW)

* * *

[Fisheries Code of the State of Washington]

* * *

75.12.120 Waste of food or shellfish unlawful — Purchase for canning, etc. It shall be unlawful for any person to wantonly waste or destroy food fish or shellfish taken or caught in any of the waters of the state, or the offshore waters, and no person engaged in the canning, preserving, or curing of food fish and shellfish shall purchase or engage a greater quantity than he is able to can, preserve, or cure within sixty hours after the same are taken from the water, unless such food fish or shellfish have been kept artificially chilled and in good marketable condition.

* * *

75.08.260 General penalty for violations. Unless otherwise provided for in the fisheries code any person who violates any of the provisions of the fisheries code, or any of the rules or regulations of the director made pursuant thereto, or who aids or abets or assists in the violation thereof, shall be guilty of a gross misdemeanor, and upon a conviction thereof shall be punished by imprisonment in the county jail of the county in which the offense is committed for not less than thirty days or more than one year, or by a fine of not less than twenty-five dollars or more than one thousand dollars, or by both such fine and imprisonment.